

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

PUBLIC EMPLOYMENT
RELATIONS BOARD

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MARILYN S. CORBIN,

Appellant,

and

STATE OF IOWA (DEPARTMENT OF
PERSONNEL),

Appellee.

CASE NO. 96-MA-0

DECISION ON REVIEW

This matter is before us on a petition for review of a proposed decision and order issued by an administrative law judge (ALJ) of the Public Employment Relations Board (PERB or Board) in which the ALJ proposed dismissal of a state employee grievance appeal filed by Corbin pursuant to Iowa Code section 19A.14(1).

In her grievance appeal, Corbin alleged that the Iowa Department of Personnel (IDOP or State) failed to substantially comply with IDOP rubrules 581-3.1(1), 581-3.4(1) and 581-4.4(2), by, in essence, improperly classifying a co-worker performing the same duties Corbin was performing. The State subsequently moved to dismiss due to PERB's purported lack of jurisdiction over the matter, asserting both that the subject matter of the appeal is not properly grievable or reviewable pursuant to section 19A.14(1), and that even if it is, Corbin's underlying grievance was not timely commenced at the initial step of the uniform grievance procedure. For purposes of ruling on the State's motion, the ALJ assumed Corbin's factual allegations to be true. The ALJ did not determine whether Corbin's complaint is a proper subject of a non-contract

grievance or whether the IDOP subrules cited by Corbin were in fact violated. Rather, the ALJ determined that, even assuming the complaint was a proper subject of a grievance and assuming the cited IDOP rules were violated, Corbin's grievance filing was untimely, and Corbin's appeal must be dismissed. Corbin filed a timely petition for review of the ALJ's proposed decision and order with the Board, pursuant to PERB rules.

Oral arguments were presented to the Board on June 21, 1996 by Corbin, appearing *pro se*, and by Betty Buitenwerf, IDOP attorney. We have reviewed the case upon the record submitted to the ALJ. Pursuant to Iowa Code section 17A.15(3), upon review we possess all powers which we would have possessed had we elected, pursuant to PERB rule 2.1, to preside at the motion hearing in the place of the ALJ.

The ALJ made no findings of fact. For purposes of ruling on the State's motion, we assume Corbin's factual allegations to be true. We hereby adopt the ALJ's recitation of the assumed facts as our own, and incorporate it by reference herein.

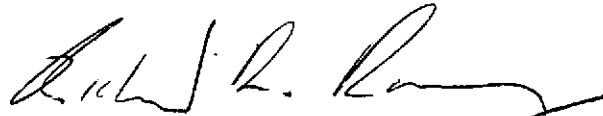
CONCLUSIONS OF LAW

The ALJ's conclusions of law, as set forth in his proposed decision and order are correct. We have considered Corbin's arguments on review and find them unpersuasive. We hereby adopt the ALJ's conclusions of law as our own and they are, by this reference, incorporated herein and made a part hereof as though fully set forth. We concur in the result reached by the ALJ.

IT IS THEREFORE ORDERED that Corbin's petition for review is denied, and her underlying state employee grievance appeal is hereby dismissed.

DATED at Des Moines, Iowa this 19th day of July, 1996.

PUBLIC EMPLOYMENT RELATIONS BOARD



RICHARD R. RAMSEY, CHAIRMAN



M. SUE WARNER, BOARD MEMBER

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

MARILYN S. CORBIN,
Appellant,

and

STATE OF IOWA (DEPARTMENT OF
PERSONNEL),
Appellee.

CASE NO. 96-MA-88

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PUBLIC EMPLOYMENT
RELATIONS BOARD

PROPOSED DECISION AND ORDER

Appellant Marilyn S. Corbin filed a state employee grievance appeal with the Public Employment Relations Board (PERB) pursuant to Iowa Code section 19A.14(1) on December 14, 1995. Appellee State of Iowa subsequently moved to dismiss due to PERB's purported lack of jurisdiction over the matter, asserting both that the subject matter of the appeal is not properly grievable or reviewable pursuant to section 19A.14(1), and that even if it is, Appellant's underlying grievance was not timely commenced at the initial step of the uniform grievance procedure.

A hearing on Appellee's motion was held before me on the 21st day of February, 1996, at PERB's offices in Des Moines. Appellant appeared pro se while Appellee appeared by its attorney, Betty Buitenwerf.

For purposes of ruling on the instant motion I have assumed Appellant's factual allegations to be true. Those facts may be summarized as follows:

Appellant at all relevant times has been employed by the Iowa Department of Personnel (IDOP) in the job classification of Personnel Technician (PT).

In September, 1990, another IDOP employee (P.W.) was transferred into the IDOP workers' compensation unit, where Appellant also worked. In her prior assignment, P.W. had been a supervisory employee receiving a higher rate of pay than that applicable to Appellant's PT classification, and P.W.'s higher pay was "red-circled" by IDOP for the year following her transfer, so as to avoid any reduction in her pay.

Although Appellant and P.W. performed equivalent functions, at the conclusion of the "red-circling" period in September, 1991, P.W. was reclassified as an Administrative Assistant 2 (AA2)--a classification compensated at a higher pay rate than Appellant received as a PT.

Appellant learned of P.W.'s reclassification in September, 1991 and felt that she and P.W. should be treated the same since they performed equivalent duties within the work unit.

IDOP's director at the time, Tom Donahue, had arranged P.W.'s transfer to the workers' compensation unit, her red-circling and her reclassification to AA2. Appellant felt intimidated by Donahue and was afraid of what he would do if she filed a grievance concerning what she perceived to be the disparate treatment.

In October, 1991, following the appointment of a new IDOP acting director, Appellant approached her immediate supervisor about the perceived inequity and was told there was nothing the supervisor could do due to a then-existing freeze on wage increases. Appellant also approached her bureau chief, who responded similarly, and then approached the acting IDOP director

who indicated that eventually the classifications of all IDOP employees would be reviewed.

In November, 1991, Appellant's performance was evaluated by her immediate supervisor. On the evaluation form Appellant reviewed and signed on November 26, 1991, she noted her belief that she was "equally entitled to the same pay and classification as other individuals in my section," a comment referring to the disparity between her classification and pay and P.W.'s.

Appellant took no formal action to address the perceived disparity in classification and pay, but instead periodically revisited the matter with her immediate supervisor, who uniformly indicated that the review of IDOP employee classifications would take place eventually.

On November 4, 1993, Appellant was transferred to a different IDOP work unit, where she has continued to serve in the PT classification. Another PT (L.M.) was transferred to Appellant's former position in the workers' compensation unit.

In November, 1994, IDOP conducted the anticipated department-wide classification reviews. Those reviews resulted in a determination that P.W. and L.M. should both receive an AA1 classification, rather than the AA2 classification P.W. then enjoyed. Appellant's classification as a PT in her most recent work assignment was unaffected by the classification review.

P.W. contested the decision to reclassify her and, after a hearing before the classification appeal committee as contemplated by IDOP rule 581-3.5(19A), the committee issued a July 15, 1995

decision that she should be classified as an AA2. L.M. was also reclassified as an AA2 following the committee's decision.

Appellant then initiated the non-contract grievance procedure set forth in chapter 12 of IDOP's rules. Her initial filing set out the essence of the classification history involving herself, P.W. and L.M. and asserted that the classification appeal committee's decision that P.W. was appropriately classified as an AA2 meant that she should have also been so classified in September, 1991. Appellant requested back pay (the difference between the PT wage rate she received and the AA2 pay rate she believed she was entitled to) for the period of September, 1991 (the date of P.W.'s initial classification as an AA2) through November 4, 1993 (the date of Appellant's transfer from the workers' compensation unit), with interest.

Appellant's grievance was initially denied, the responder ruling that the grievance was untimely and should have been filed in 1991 when Appellant first became aware of the issue. The grievance was subsequently filed with the IDOP director as permitted by Iowa Code section 19A.14(1) and IDOP rule, and the director's designee ultimately issued a decision denying the grievance on a number of grounds, including its untimely initiation and the inapplicability of the grievance forum to classification issues which may be raised and resolved pursuant to the classification appeal process set forth in IDOP rules.

Appellant filed her appeal to PERB within 30 days following the issuance of the director's designee's response. The State subsequently filed the instant motion to dismiss.

CONCLUSIONS OF LAW

Iowa Code section 19A.14(1), pursuant to which the instant matter was brought, provides, in relevant part:

19A.14 Grievances and Discipline Resolution.

1. **Grievances.** An employee, except an employee covered by a collective bargaining agreement which provides otherwise, who has exhausted the available agency steps in the uniform grievance procedure provided for in the department of personnel rules may, within seven calendar days following the date a decision was received or should have been received at the second step of the grievance procedure, file the grievance at the third step with the director. The director shall respond within thirty calendar days following receipt of the third step grievance.

If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. The hearing shall be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act. Decisions rendered shall be based upon a standard of substantial compliance with this chapter and the rules of the department of personnel. Decisions by the public employment relations board constitute final agency action.

In her appeal to PERB Appellant asserts the same underlying claim she has relied upon throughout the grievance process: that during the relevant period she and P.W. performed the same work but that P.W. received higher pay due to her AA2 classification. She maintains that either P.W. should have been demoted from an AA2 or that she should have been reclassified upward to AA2, and requests the same back pay and interest remedy she sought in her initial grievance filing.

Appellant's theories of her case, which she articulated in detail at the hearing on the instant motion, do not include any claim that her PT classification during the period in question was, in fact, incorrect in view of the duties and responsibilities she was then assigned. Appellant readily concedes that her PT classification itself was appropriate during her tenure in the workers' compensation unit.¹ Instead, the essence of her claim is that P.W.'s AA2 classification was inappropriate under the circumstances, which also tainted the rate of pay P.W. received. Since P.W. enjoyed what Appellant views as an inappropriate classification and rate of pay during the period in question, Appellant reasons that she too was entitled to such treatment.

As noted by the director's designee's response to the grievance, the case may be interpreted as raising both classification and pay issues, depending upon how one views Appellant's claim.

In her appeal Appellant asserts IDOP's failure to substantially comply with two provisions of its rules regarding position classifications--581-3.1(1) and 581-3.4(1). In September, 1991, when Appellant learned of P.W.'s reclassification to AA2 and of her disparate treatment, those subrules provided as follows:

581-3.1(19A) Overall administration.

3.1(1) The director shall prepare, maintain, and revise a classification plan for the executive branch of state government such that all positions that are similar

¹Likewise, as suggested by Appellant's specification of her desired remedy, she acknowledges that her PT classification (and rate of pay) following her November, 1993 transfer to her present work unit was appropriate.

with respect to kind and level, as well as skill, effort, and responsibility of duties assigned may be included in the same job classification.

581-3.4(19A) Position classification reviews.

3.4(1) The director shall decide the job classification of all positions in the executive branch of state government except those specifically provided for by law.²

Appellant maintains that IDOP failed to substantially comply with subrule 581-3.1(1) because the classification plan was not maintained in such a way that positions performing the same work (hers and P.W.'s) were included within the same classification. Apparently relying on subrule 581-3.4(1) as it existed at the time of the initiation of her grievance, rather than in September, 1991, Appellant asserts that there was not compliance with that subrule because P.W.'s classification was not based upon the duties assigned, but was instead the product of the then-IDOP director's preferential treatment of P.W., taken without regard to the actual duties and responsibilities accompanying P.W.'s assignment.

If Appellant was asserting that these provisions were violated by her own improper classification (i.e., that P.W. was properly classified as an AA2 while she was not), I would conclude that PERB is without jurisdiction over those portions of her claim. Resolution of a claim that one is improperly classified involves a substantive review of the kind and level of duties and responsibilities assigned to the person's position, as well as of

²The quoted portion of subrule 581-3.4(1) was subsequently amended, effective May 19, 1993, by the addition of an additional sentence: "Decisions shall be based solely on duties permanently assigned."

the skill and effort necessary to accomplish them. Such substantive classification determinations, and appeals therefrom, are obtained and pursued only through the procedures specified in IDOP rules 581-3.4, 581-3.5 and Iowa Code section 17A.19. IDOP has been recognized by the Iowa Supreme Court as possessing specialized expertise in this field. Its jurisdiction over substantive classification matters is exclusive, and is not subject to the non-contractual grievance or grievance appeal procedures. Allen v. State of Iowa, Dept. of Personnel, 528 N.W. 583, 588 (Iowa 1995).

As previously noted, however, Appellant's "classification" claim really does not turn on the merits of her own classification, but instead on the inequity created by P.W.'s alleged misclassification as an AA2. Even assuming, without deciding, that an employee's complaint about the propriety of a coworker's classification is a proper subject of a non-contract grievance, and further assuming, without deciding, that the subrules cited by Appellant were in fact violated by P.W.'s 1991 reclassification to AA2, those portions of Appellant's claim must nonetheless be dismissed.

Appellant readily acknowledges that she became aware of P.W.'s allegedly-improper reclassification when it occurred in September, 1991.³ Pursuant to IDOP rule 581-12.1, grievances must be initiated within 14 days following the day the grievant first became aware of or through the exercise of reasonable diligence

³Even absent such a concession, it is clear that she possessed such knowledge no later than November 26, 1991, when she complained about the disparity in her response to her performance evaluation.

should have become aware of the grievance issue. There is no claim by Appellant that IDOP concealed the availability of the grievance procedure from her, and she tacitly admits her knowledge of the potential remedy in her pleadings, stating that she "was afraid if I filed grievance, he [IDOP director Donahue] would rip me to pieces." Appellant instead chose to await the results of the anticipated department-wide classification review, apparently hoping that it would result in the elimination of the perceived disparity.

PERB has deemed the timeliness objection waived and has refused to dismiss an appeal where the underlying grievance was untimely but thereafter proceeded through the grievance process without objection until the matter reached PERB. Gammon/State (DHS), 90-MA-06 (1990). However, where the grievance's untimely initiation was the basis for earlier grievance responses and the record supported the untimeliness finding, dismissal has been ordered. Sinner/State (DHS), 87-MA-06 (1987).

Here, P.W.'s allegedly-improper reclassification occurred in September, 1991, an event Appellant knew of no later than November, 1991. Her grievance initiated in the summer of 1995--more than three years after the fact--was clearly not within the 14-day limitation period specified by IDOP rule. This defect was noted in and formed a basis for both IDOP responses to the grievance, thus preserving the issue for consideration at this time. Consequently, regardless of whether Appellant's rule 581-3.1 and 581-3.4 theories are viewed as addressing her own classification or merely the

classification of her coworker, these portions of her claim are not ones over which PERB may exercise its section 19A.14(1) jurisdiction, and they must be dismissed.

Appellant also alleges IDOP's noncompliance with subrule 581-4.4(2). At all times relevant to Appellant's claim that subrule has provided, in relevant part:

581-4.4(19A) Administration.

4.4(2) Total compensation. No employee shall receive any pay other than that specifically authorized for the discharge of the duties assigned to the position occupied, except as specifically authorized in the Iowa Code.

Appellant's subrule 4.4(2) theory is that P.W., following her 1991 reclassification to AA2, received pay in excess of "that specifically authorized for the discharge of the duties assigned to the position" since the duties assigned to the position did not justify P.W.'s AA2 classification. According to Appellant, subrule 4.4(2) requires consistency of pay among those performing like work.

Even assuming the accuracy of Appellant's interpretation of subrule 581-4.4(2), it is apparent that her attempt to raise the issue in her 1995 grievance filing was untimely. Any issues concerning the propriety of Appellant's rate of pay, or of P.W.'s for that matter, were apparent to Appellant no later than November, 1991. She was required to initiate the non-contract grievance procedure within 14 days following the date she first became aware of or should have become aware of such issues. She did not.

While one may understand Appellant's reluctance to challenge, by the filing of a grievance, actions which she perceived to have been taken personally by her employing agency's director, the fact remains that she chose not to do so, instead electing to await a department-wide classification review in the apparent hope that it would remedy the perceived disparity. Although the classification review and subsequent appeal by P.W. ultimately did produce identical classifications for P.W. and Appellant's successor, that result came too late to be of benefit to her.

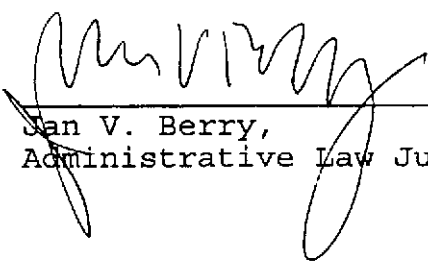
That portion of Appellant's grievance claiming IDOP's non-compliance with subrule 581-4.4(2) was not initiated in a timely manner. Even assuming, without finding, that such noncompliance in fact occurred, the untimely claim is not one over which PERB may exercise its section 19A.14(1) jurisdiction.

Consequently, I propose the entry of the following:

ORDER

The State of Iowa's motion to dismiss the above-captioned state employee grievance appeal is granted, and said appeal is DISMISSED.

DATED at Des Moines, Iowa this 26th day of March, 1996.



Jan V. Berry,
Administrative Law Judge